



INTERIOR BOARD OF INDIAN APPEALS

Louis Sequoyah Locust v. Acting Anadarko Area Director, Bureau of Indian Affairs

18 IBIA 286 (05/08/1990)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

LOUIS SEQUOYAH LOCUST

v.

ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-37-A

Decided May 8, 1990

Appeal from the denial of an educational loan.

Dismissed.

1. Appeals: Generally--Bureau of Indian Affairs: Administrative
Appeals: Filing: Mandatory Time Limit

A notice of appeal from an action or decision of a Bureau of Indian Affairs official that is not timely filed with the Board of Indian Affairs will be dismissed for lack of jurisdiction in accordance with 43 CFR 4.332(a).

APPEARANCES: Louis Sequoyah Locust and Ahinawake Nibbs, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Louis Sequoyah Locust seeks review of a November 3, 1989, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (BIA; Area Director), denying his request for an educational loan. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal for lack of jurisdiction.

Background

On August 25, 1989, appellant, a Cheyenne-Arapaho, applied for a \$3,750 loan to attend Southern Nazarene University in Bethany, Oklahoma (university), which he had already attended for several semesters. The application was filed with the Concha Agency, BIA (agency).

The agency credit committee met on September 18, 1989, and considered appellant's application. The minutes of that meeting show that appellant's mother, Ahinawake Nibbs, agreed to cosign for the loan and offered trust income of \$1,250 per year to repay the loan. The minutes further indicate

that appellant was having academic difficulties at the university. By letter dated September 26, 1989, appellant was informed that his application had been tabled pending receipt of: "1. A [loan] denial letter from the tribal educational office. 2. An acceptance letter from the University. 3. Additional collateral in addition to trust income."

The requested information was furnished, and the agency credit committee met again on October 12, 1989, to consider appellant's application. The committee recommended disapproval. Accordingly, on October 25, 1989, the agency referred the application to the Area Director with that recommendation. By letter dated November 3, 1989, the Area Director denied the loan, stating:

The reasons we are not able to approve this request are based on the following:

1. Your Grade Point Average of 1.0 on attempting 27 hours while passing 17 hours is too substantial a variance from the minimum required G.P.A. of 2.0.

2. It is felt that when the Tribe gave you the Grant Funds for the fall semester of 1988 and the spring of 1989 year of college, you were given sufficient opportunity and ample time to demonstrate your willingness and responsibility to progress. As a result of your lack of progress and G.P.A., the Cheyenne and Arapaho Tribes have discontinued your Grant Funds as indicated by their letter to you dated August 28, 1989. In addition the Southern Nazarene University Financial Assistance Office state in their letter to you dated June 5, 1989, that due to unsatisfactory academic progress * * * you did not meet the conditions of their probation letter to you. * * *

3. Based on the above information we feel that you have been given every opportunity to demonstrate successful academic advancement. Therefore, we are of the opinion that the prospect of finishing college and finding adequate employment to pay the loan does not appear to be probable. Hence, we do not feel that there is a reasonable prospect of repayment.

By letter dated November 16, 1989, appellant informed the Area Director of his intention to appeal the denial. The Board received a copy of that notification and a statement of reasons, dated November 30, 1989, on December 21, 1989.

By letter dated January 23, 1990, appellant filed a second statement indicating his desire to increase the loan amount requested to \$6,200. No other filings were received.

Discussion and Conclusions

The Area Director's decision correctly informed appellant of his appeal rights, including the fact that any notice of appeal was to be filed with the Board within 30 days of his receipt of the decision. The decision further indicated that no extension of time could be granted for filing a notice of appeal. 1/

The record shows that appellant's mother signed for the Area Director's decision on November 6, 1989. Appellant's November 16, 1989, letter states in its entirety: "In regard to your letter of November 3, 1989, disapproval request for an educational loan for \$3,750.00. This is to notify you that I will appeal the action." The Board received a copy of that letter and appellant's November 30, 1989, "statement of reasons" on December 21, 1989. The envelope containing the two documents was postmarked December 14, 1989. 2/

[1] Appellant's notice of appeal should have been mailed to the Board on or before December 6, 1989. Because the notice of appeal was not timely filed and because appellant was correctly informed of the appeal procedures, this appeal must be dismissed for lack of jurisdiction. Lovelock Paiute Tribe v. Acting Phoenix Area Director, 17 IBIA 223 (1989); Baker v. Anadarko Area Director, 17 IBIA 218 (1989); Jones v. Assistant Anadarko Area Director, 17 IBIA 122 (1989).

Furthermore, even if the Board were to reach the merits of this appeal, decisions concerning whether to approve educational loans are committed to the discretion of BIA. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of that discretion. See, e.g., Hamilton v. Acting Anadarko Area Director, 17 IBIA 152 (1989).

In reaching his decision to deny appellant's loan application, the Area Director considered appellant's academic progress and the likelihood that he would complete college with sufficient standing to obtain employment that would allow him to repay the loan. This was a reasonable exercise of the Area Director's discretion.

1/ 43 CFR 4.332(a) provides:

"A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative * * *, and filed with the Board of Indian Appeals * * * within 30 days after receipt by the appellant of the decision from which the appeal is taken. * * * A notice of appeal not timely filed shall be dismissed for lack of jurisdiction."

2/ 43 CFR 4.310(a) provides: "The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing * * *."

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Muskogee Area Director's November 3, 1989, decision is dismissed for lack of jurisdiction. 3/

//original signed

Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed

Anita Vogt
Administrative Judge

3/ Because of this disposition, appellant's request to increase his loan to \$6,200 is denied.